IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 98 OF 1998.

1. Goa Chamber of Commerce &
   Industry, a Society
   registered under the Societies
   Registration Act, having its
   Office Near Azad Maidan,
   Panaji.
2. Mr. J.R. Deshprabhu,
   Treasurer, Ormuz Road,
   Near Azad Maidan, Panaji. ... Petitioners.

Versus

1. Union of India through
   Ministry of Telecommunications,
   New Delhi.
2. Telecom District Manager (Goa),
   Mathias Plaza Bldg., 3rd
   Floor, Panaji.
3. Shri R.N. Singh, Sole
   Arbitrator, Dy. General
   Manager, Telecom, Satara,
   Maharashtra. ... Respondents.

Mr. A.N.S. Nadkarni and Mr. P.A. Kamat, Advocates for the Petitioners.

Mr. V.P. Thali, Senior Central Government Standing Counsel for the Respondents.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 4th June 2003.

ORAL JUDGMENT (PER REBELLO, J.)

By the present petition, the petitioners impugn the Award made under Section 7-B of the Indian Telegraph Act, dated 24th June 1997. The reference came to be made pursuant to a direction issued by this Court, dated 2nd April 1996 in Writ Petition No. 118 of 1996.

2. At the hearing of the petition various grounds

have been urged on behalf of the petitioners. Amongst them, it is contended that the petitioners by application dated 19th May 1997 had called upon the learned Arbitrator to make available all statements recorded so as to enable the petitioners to effectively present their final arguments either orally or in writing. It was also pointed out that the copies including the proceedings/statements and documents, have not been made available and that would seriously interfere in the petitioners effectively arguing their case. The learned Arbitrator by his Order, dated 19th May 1997, set out therein that the statements have been recorded in the presence of the parties. It is further set out that the facts and the statements are recorded after co-relating the situation while delivering the final arbitration award and that nothing had been recorded without the knowledge of both the parties and under these circumstances, the petitioners could participate in the final hearing without the copies of minutes of past hearings. Therefore the request was rejected. It is contended therefore on behalf of the petitioners that this amounts to denial of fair opportunity and once that be the case the principles of natural justice and fair play have been violated and the Award is liable to be set aside.

3. On the other hand, on behalf of the

respondents, it is contended that the petitioners cannot claim that prejudice has been occasioned to them as the telephone numbers which have been allotted to the petitioners have been misused. This can be evidenced by the documentary evidence. It is pointed out that each telephone number has what is described as equipment number. In the instant case it is pointed out that the telephone numbers which the petitioners had were used to make calls but those calls were diverted to unlisted numbers, which were only to the knowledge of the Departmental Staff. These are known as spare numbers. The fact that the calls are made can be co-related by the equipment numbers. In the instant case it is pointed out that the respondents are able to identify that the telephones allotted to the petitioners were misused by the petitioners by diverting those calls to the unlisted numbers/spare numbers. It is also contended that considering the record, there is material to show that the petitioners had given two telephone numbers for use to other persons. Even if officials of the respondents are involved, it was in connivance with the persons engaged by the petitioners and in these circumstances, the petitioners were liable to pay the said amounts. Considering that, it is contended that the contention that no fair opportunity was given, has no merit, and in these circumstances, the petition as filed ought to be dismissed.

4. After hearing counsel, to our mind, it is not possible to go into the merits of the matter as, in our opinion, there has been denial of fair opportunity to the petitioners. It is a requirement of law specially before a quasi-judicial authority that the principles of natural justice must be followed and that would require that documents used against the petitioners be made available to them. Similarly notes of evidence which were sought for and which evidence was recorded by the Arbitrator be made available to the petitioners if asked for. In the instant case the records disclose that there has been a change of lawyers who appeared for the petitioners and when the petitioners sought an opportunity that the documents and evidence be made available to them, that was denied. That denial by the learned Arbitrator has resulted in the petitioners being denied a fair opportunity in effectively arguing their case.

5. In the light of that the following order:-

The impugned Award is set aside. The matter is remanded to the Arbitrator. In the event the same Arbitrator is not available, the General Manager of Goa Telecom Department to appoint another Arbitrator within a period of 3 months. The Arbitrator thereafter to proceed to dispose of the proceedings at the earliest by

giving an opportunity to the petitioners by making the documents and/or notes of evidence available to them.

6. After the petition was admitted, the petitioners had deposited money in this Court. Considering the matter is remanded, the said deposit to continue till a fresh award is made and for a further period of eight weeks thereafter from the communication of the Award to the petitioners. The money to be paid only on orders or directions passed by this Court.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

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